



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ADP Case No. 17-02409

Applicant for Public Trust Position

Appearances

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

09/25/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the personal conduct trustworthiness concerns, but failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On July 26, 2017, and November 16, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Statements of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E, personal conduct, and F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SORs on September 23, 2017, and November 20, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 25, 2018, scheduling the hearing for March 21, 2018. On

March 14, 2018, Applicant requested a continuance. His request was granted.¹ On May 17, 2018, DOHA issued a notice of hearing, scheduling the hearing for July 24, 2018. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through K, which were admitted into evidence without objection. DOHA received the hearing transcript on August 1, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.c,² 1.e, and 2.a through 2.g. He denied the SOR allegations ¶¶ 1.a, 1.b, 1.d, and 1.h through 1.i. The Government withdrew the allegations in SOR ¶¶ 1.f and 1.g. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 47 years old. He earned a bachelor's degree in 1997 and a master's degree in 2012. He married in 2007 and was separated from August 2012 to April 2016, when his divorce was final. He has four children from the marriage, ages 16, 15, 10 and 9 years old. He has two other children ages 21 and 24 from a previous relationship. He testified he was unemployed from August 2014 to November 2014, when he began work with his current employer.³

In Applicant's answer to the SOR he denied all of the delinquent debts alleged except a student loan owed to a university and repossessed vehicle. He said his late father had the same name as his and many times the credit references for his father were linked to Applicant's credit report. In response to SOR ¶¶ 1.d and 1.f through 1.i, Applicant stated: I disputed the debts with all 3 major credit bureaus."⁴ He did not provide any documents to corroborate his disputes or resolution of the disputes.⁵

During Applicant's April 2017 background investigation with a government investigator, he was confronted by the investigator with each of the debts alleged in SOR ¶¶ 1.a through 1.i. He told the investigator that he agreed with each debt; he could not recall the specific details of each debt including the date it was initially incurred, the date it became delinquent or any collection efforts; he did not list the debt on his security clearance questionnaire due to forgetting about the debt; his future intention was to contact each creditor and to repay the debt by a date not yet determined; and his

¹ Hearing Exhibit (HE) I is the Government's exhibit list; HE II is the Government's discovery letter; HE III is email correspondence.

² Applicant denied the allegation in SOR 1.c in his original answer. The amended SOR changed ¶ 1.c by noting the account was charged off in the amount of \$20,018. Applicant admitted the amended allegation.

³ Tr. 20-23.

⁴ Answer to SOR September 23, 2017.

⁵ Answer to SOR.

financial problems were due to his past divorce, loss of his wife's income, and his requirement to pay child support.⁶

Applicant denied the SOR allegation in ¶ 1.a (past-due mortgage in approximate amount of \$26,516). He explained he began missing mortgage payments in February 2013, due to his child support obligations. He made some payments, but not the full amount. He could not afford to make the full mortgage payment and defaulted on his mortgage. He provided a document to show that in April 2018, he was approved to enter into a trial period for a mortgage modification. He made the required three monthly payments of \$980. He did not know if the delinquent amount would be rolled into a new balance. He believed his new monthly payment will be \$980. He was waiting for the final modification documents from the mortgagor.⁷

The debt in SOR ¶ 1.b (\$25,690) is a collection account for delinquent child support. Applicant attributes this debt to unemployment. He testified that in February 2013, he was ordered to pay \$4,500 as a one-time payment and then pay \$1,000 a month for his four children. He said he made these payments until April 2016. He said he was providing his wife "other payments" that were not reflected. When he went to court, he provided receipts of his payments, but he could not prove all of the amounts he claimed he paid. He said this is the arrearages. He provided a document to show that the amount of child support in arrears as of July 2018 is \$16,746. He also provided a document to show that from August 16, 2016, to July 2018, weekly payments of \$685 were made for child support and arrearages. The document also shows that two weekly payments on August 2 and July 26, 2016, were made for \$219. Applicant stated that withdrawals are made directly from his pay for his current child support and arrearages, and he should be caught up in 117 weeks.⁸

Applicant attributes the debt in SOR ¶ 1.c to his divorce and child support obligations. He purchased a used car in February 2013 for \$25,000. His last full payment was July 2017. He maintained possession of the vehicle until early 2018 when he returned it to the creditor. The balance owed is \$20,018. He contacted the creditor in July 2018 and made an agreement to pay \$50 a month. He testified that beginning in August 2018, he would pay \$375 a month.⁹

Applicant testified that in January 2018 he spoke with a credit counselor for financial advice because he believed it would be helpful to mitigate the security concerns raised. He was advised to consolidate all of his bills into a monthly payment. He did not take the advice, instead he wanted to work out individual agreements with

⁶ GE 2. I have not considered any derogatory evidence that was not alleged for disqualifying purposes. I may consider it when making a credibility determination, in the application of mitigation, and in a whole-person analysis.

⁷ Tr. 23-33; AE A.

⁸ Tr. 33-44; AE B.

⁹ Tr. 44-52; GE 5; AE C.

his mortgage company and the car creditor, as explained above. He believed he could pay the smaller bills directly and consolidate the others. He provided no evidence that he has done this. He does not have a contract with the credit counselor and has not had recent contact with her since January 2018. Applicant stated that at some point in the future, the credit counselor will contact his creditors to negotiate settlements and arrange payment plans. He was unaware if his credit counselor had contacted his creditors, but assumed she did. He stated he has a step-by-step process to resolve his debts and resolution of the remaining debts “in the future, they’re part of my financial plan, and those will be the next steps that I will be tracking.”¹⁰

Applicant works part time as a driver. He anticipated working at another part-time job with increased pay. At the time of hearing, he had not started the job. He provides some support to his older children, as needed. Applicant owes approximately \$80,000 in student loans. In July 2018, he requested the loans be placed in forbearance. It is unknown if the charged off student loan alleged in SOR ¶ 1.e is included in the forbearance request. His request was approved, and the loans will not be due until April 2019. Interest on the loans continues to accrue. At this time, he does not know the amount his monthly payments will be. He hopes to get another part time job that will pay more.¹¹

Applicant’s admissions, testimony, and credit reports from December 2016, June 2017, and October 2017 corroborate the debts alleged in the SOR.¹²

Applicant was arrested in October 1995 and charged with first degree battery. He pled no contest and was placed on 12-months’ probation. Applicant testified that he grabbed his college girlfriend at the time, and she fell and sustained scratches. He admitted he accepted a no contest plea. He was on probation and attended 26 weeks of domestic violence classes. He completed the terms of the probation. He no longer has contact with this woman.¹³

A temporary injunction was entered on behalf of Applicant’s wife against him in July 16, 2012 for protection (domestic violence with children). On July 27, 2012, a petition for an injunction (domestic violence with children) was filed by Applicant’s wife against him. Applicant was arrested on July 31, 2012, and charged with first degree battery-domestic violence, a misdemeanor against his wife. Applicant admitted the allegation. In his statement to the police, he claimed he sprayed his wife in the face with mace in self-defense. His wife’s statement contradicts his claims. She said he attacked her without provocation. The charge was eventually nolle prossed.¹⁴

¹⁰ Tr. 53-65; AE D.

¹¹ Tr. 65-73; AE D.

¹² GE 2, 3, 4, 5.

¹³ Tr. 73-78.

¹⁴ Tr. 79-92; GE 6, 7.

In August 2012, a one-year permanent injunction for protection (domestic violence with children) was entered against Applicant on behalf of his wife. On November 12, 2013, a petition for injunction (domestic violence with children) was filed against Applicant by his wife.¹⁵

Applicant testified that the above accusations (SOR ¶¶ 2.b, 2.c, 2.e, and 2.f) were related to his issues with his wife and their divorce. He claimed she wanted a divorce and had moved out of their house. He believed she had a plan to use the domestic violence accusations so she would be awarded the house. He said the house was in his name only. He believed that she wanted to get an injunction against him so she would be given custody of their children. There is no corroborating evidence.¹⁶

In December 2014, Applicant was arrested and charged with third degree aggravated assault with a deadly weapon, a felony. Applicant was living with a girlfriend. He denied he assaulted her. He stated that she had a knife, and he called the police. The charge was not pursued by the prosecution. Appellant provided a letter from the girlfriend stating she was the aggressor; was in possession of the knife; and she lied to the police when she told them what had happened.¹⁷

Applicant testified that he recently sought counseling and a psychological evaluation. One was conducted by a licensed psychologist who noted it was being conducted in order for Applicant to apply for a security clearance.¹⁸ The psychologist stated:

Per his own self-report, there were two instances in the past which resulted in arrests; however, he was candid in sharing his perspective of the struggles and adamant that he was not the aggressor in both situations, as evidence of the charges being dropped. Current test results revealed no concerns in regards to his temperament or anger management; it is highly likely that personality differences and/or poor decision-making in regards to past actions and/or relationships may have accounted for extreme interactions.¹⁹

The psychologist's diagnosis was "no diagnosis." Applicant failed to disclose to the psychologist his 1995 arrest for battery against his girlfriend and that he was placed on probation for a year and was required to complete 26 weeks of domestic violence classes. Applicant reported to the psychologist the incident when he sprayed his ex-wife with mace indicating he was not the aggressor and a second incident when a girlfriend claimed he threatened her with a knife and then recanted her story. Applicant's failure to

¹⁵ Tr. 79-92.

¹⁶ Tr. 79-92; GE 6, 7.

¹⁷ Tr. 93-96; AE H.

¹⁸ Tr. 96-102; Applicant's application is for a position of trust and not a security clearance determination.

¹⁹ AE J.

be completely forthcoming about his past conduct raises questions about the reliability of the diagnosis.²⁰

Applicant testified that he wanted to determine if he had any anger issues and was told by his psychologist that he was fine. His psychologist did not recommend any counseling. Applicant said that he has not had any incidents with his ex-wife since 2013 and their relationship is now cordial.²¹

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard

²⁰ AE J.

²¹ Tr. 96-102; AE G.

sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F: Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following is potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had numerous delinquent debts that began accumulating in 2013, including delinquent child support that he is unable or unwilling to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt, which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial problems to a short period of unemployment in 2014 and his divorce. He separated from his wife in 2012, and the divorce was final in April 2016. He paid child support, but accumulated arrearages. He acknowledged his delinquent debts when he was interviewed by a government investigator in 2017 and indicated he would pay them in the future. He denied them in his answer to the SOR. He recently obtained a loan modification for his mortgage. He has a recent modest payment agreement for a repossessed car debt. He did not provide sufficient evidence that he is addressing his other delinquent debts. His debts are recent. He has not established a reliable financial track record. There is insufficient evidence to conclude future financial problem are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a period of unemployment in 2014, divorce, and child support. He had been separated since 2012. His unemployment and divorce were beyond his control. His obligation to pay child support is his responsibility as a father and not beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant has obtained a loan modification for his mortgage and completed the three-month trial period. He recently began paying \$50 a month for the amount owed on his repossessed vehicle. During his background interview, he said he would address his delinquent debts in the future. He testified that he contacted a credit counselor, but has not addressed his other delinquent debts. Although he has addressed two of his SOR debts, he has only made three payments to date. The evidence is insufficient to show he has acted responsibly regarding his other debts. AG ¶ 20(b) partially applies.

There is evidence that Applicant sought advice from a credit counselor, but there is insufficient evidence to conclude there are clear indications that the problem is being resolved or is under control. Applicant told the government investigator in 2017 that he would address his delinquent debts in the future. He testified at his hearing that he

believed he could pay the smaller bills directly and consolidate the others. He provided no evidence that he has done this. He has not had recent contact with the credit counselor. Applicant stated that at some point in the future, he will contact his creditors to negotiate settlements and arrange payment plans. AG ¶ 20(c) does not apply.

Applicant obtained a loan modification for his mortgage. He recently completed a three-month trial period of payments. He is waiting for the mortgage company to provide him with the completed loan modification at which time he will begin making monthly payments. His monthly child support is being paid automatically and additional amounts are deducted to reduce his arrearages. He still owes over \$16,000 in arrearages. He recently began paying \$50 monthly for his repossessed vehicle. He stated the amount will increase in August 2018. Applicant has made some effort to address his delinquent bills. However, he still has numerous delinquent debts and does not have a viable plan for resolving them other than to say he will do so in the future. AG ¶ 20(d) has some application, but Applicant lacks a financial track record of sustained payments.

During his interview with a government investigator, Applicant agreed he owed the debts alleged, forgot to disclose them on his SCA, and he said he would repay them in the future. In his answer to the SOR, Applicant denied he owed most of the delinquent debts alleged, saying he disputed them with the three major credit bureaus. He did not provide evidence that the debts do not belong to him; documents to corroborate his disputes; or resolutions of the disputes. At his hearing, he said he would resolve his delinquent debts in the future. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

In 1995, Applicant was charged with first degree battery on his girlfriend. He pled no contest, was given probation for 12 months and required to attend a 26-week domestic violence program, which he completed. In 2012, Applicant and his wife were separated, and she filed several temporary injunctions for protection, which were denied. He admitted that he sprayed her with mace. Both claim the other was the aggressor. A permanent injunction for protection was granted after this incident. In December 2014, Applicant's girlfriend claimed he threatened her with a knife. She later recanted her allegation. None of the altercations with his wife or his later girlfriend resulted in convictions. There is sufficient evidence to show a pattern of conduct that raises concerns under the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or take other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant was involved in a domestic violence incident in 1995. He pled no contest, was on probation for a year, and completed a domestic violence program. From 2012 to 2016, Applicant and his wife had a tumultuous separation and divorce. It appears both were involved in conduct to gain a more advantageous position. Applicant sprayed his wife with mace. The offense was not prosecuted. In 2014, he was involved in an incident with a girlfriend. He denied he was the aggressor, and she later recanted her story. It appears the issues with his wife are resolved, and he is no longer associated with the other women. Applicant's failure to disclose his 1995 domestic violence offense to the psychologist during his psychological evaluation, raises

questions about the reliability of the diagnosis. Applicant's personal conduct was not minor or infrequent, but it appears now that his personal life is settled, it is unlikely to recur. I find AG ¶ 17(a) has some application.

Applicant failure to be completely honest with his psychologist to determine if he had a problem is a concern. I find AG ¶¶ 17(d) and 17(e) have some application. Applicant's ex-girlfriend recanted her allegation, so there is some evidence regarding her reliability. However, I am unable to determine her actual motivation for recanting. AG ¶ 17(f) has some application.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 47 years old. He accumulated delinquent debts due to unemployment and divorce. He recently completed a three-month trial period on a loan modification for his delinquent mortgage. He recently made three payments of \$50 on the debt for his repossessed vehicle. He is making child support payments, but still owes \$16,000 in arrearages. A significant concern is that Applicant acknowledged the delinquent debts during his background interview, said he forgot to disclose them, and said he would address them in the future. He then denied the debts in his answer to the SOR, alluded to them being a mistake because his deceased father had the same name, and that he disputed them with the credit bureaus. At his hearing, he acknowledged the delinquent debts and said he sought credit counseling, and again said he would address them in the future. I question Applicant's credibility. Although, I believe there is sufficient evidence to mitigate the personal conduct concerns raised by

his conduct with his ex-wife, his ex-girlfriend from 1995, and the allegation from his ex-girlfriend from 2014, I do have concerns about his honesty with his psychologist and statements he made regarding his finances. Although Applicant addressed some of his delinquent debts, at the time of his hearing, he had only made payments for three months. He failed to address any of his other debts, promising to do so in the future. A promise he also made during his background interview. Applicant has not established a sufficient reliable financial track record. He has mitigated the personal conduct concerns, but there is insufficient evidence to overcome the trustworthiness concerns raised under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraphs 1.f-1.g:	Withdrawn
Subparagraphs 1.h-1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.g:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge